

**Nebraska State Foster Care Review Office**  
**Reviewing the Permanency Plan**  
**For Cases Involving a 3a petition or a Voluntary Foster Care Placement**

**“Findings”**

The Foster Care Review Office conducts reviews in order to assure that children in out-of-home care have their needs met while in OOH care and reach a timely, appropriate permanency. The FCRO also works to provide system oversight. Statistics gathered from reviews, such as the findings described in this document assist in providing that oversight.

Each of the findings local boards make is based on federal requirements, state mandates, and/or child’s best interests. **Neb. Rev. Stat. 43-1308(b) requires that rationale be provided for each finding in the report to the court and legal parties.** A clarification of each finding in reference to the SDM©<sup>1</sup> Case Plan follows. Findings should be made for each individual child being reviewed, therefore throughout this document we refer to “child” rather than “children”.

It is essential that plans are reviewed across the agency in a consistent and uniform manner and issues and recommendations communicated in the most efficient manner possible. Recommendations must be submitted within the timeframe established by individual courts. Court requirements differ, most allowing submissions no later than a minimum of 5 days prior to the hearing.

The work of the staff and local boards is valuable. Here is just one quote:

“Importantly, §43-285(6) provides that the only prerequisite for the admission in evidence of the [FCRO’s] Board’s written findings and recommendations is that they have been provided to all other parties of record. The Foster Care Review Act and the Board [agency] would be empty vessels indeed if the Board’s [agency’s] recommendations were not considered by the court. Thus, we do not take the Board’s [agency’s] emphatic stand against the DSS [now DHHS] plan to be a meaningless gesture.”

*In Re Interests of John T., Court of Appeals, (1995).*

**Your work makes a difference for every child you review**  
**now and into the future!**



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<sup>1</sup> Structured Decision Making© is a specific tool being utilized by the Department of Health and Human Services.

## **Defining “Documentation”**

Throughout the findings there are references to “documentation.” The following should help define what is, and is not, included in that term.

Documentation may be in electronic or written form. There are three major classifications of documentation.

1. Legal Documents.
  - a. Legal documents used as a basis for the rationale for a finding may include Birth Certificates, Court Orders, notarized statements, etc.
2. Reports that are signed and dated.
  - a. Some examples include evaluations, assessments, case plans/court reports, emails from legal parties, and completed questionnaires.
3. Narratives, notes, and minutes.
  - a. Some examples could include caseworker narratives, family group conference minutes, notes, etc.

**All types of documentation can be used, but they may be given different weight.**

Review specialists cite the sources for the documentation within the body of the FCRO’s recommendation reports. For example (caseworker narrative dated 10/1/2013). Review specialists should specify who it was that provided narrative, rather than use the generic N-FOCUS narrative dated 10/1/2013. Narratives can be from case workers, lead agency workers, family support workers, etc., and different weight may be given each. For example, a family support worker may be reporting on what they directly observed during a visitation.

There may be times within a recommendation that conflicting documentation will need to be cited and clarification requested.

### **Safety considerations:**

Review specialists should immediately consult with their supervisor any time there is a finding regarding a child being unsafe – whether that is due to issues in the placement, issues with visitation, efforts not being made to protect the child, service issues, etc.

## **The findings are divided as follows:**

### **Preventing removals**

- 11 Reasonable efforts to prevent removal

### **Child's current placement**

- 21 Safety and appropriateness of placement

### **Services to achieve permanency**

- 31 Services offered to Mother
- 32 Compliance with services - mother
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### **DHHS Plan**

- 41 DHHS plan completeness
- 42 Whether DHHS evaluated safety in its plan

### **Court ordered primary permanency plan**

- 51 Appropriateness of the primary objective
- 52 DHHS making reasonable efforts to primary plan
- 53 Progress to primary objective
- 54 Completeness of the plan ordered by the court

### **Court ordered concurrent plan**

- 61 Appropriateness of the concurrent objective
- 62 DHHS making reasonable efforts to concurrent plan
- 63 Progress to concurrent objective

### **Visitation**

- 71 Visitation with Mother
- 72 Visitation with Father
- 73 Sibling visits

### **Continued need for out-of-home care**

- 81 Continued need for out-of-home care

### **Required findings on TPR and alternative permanency**

- 91 Alternative permanency if return home is not possible
- 92 Do grounds for TPR appear to exist

## Preventing Removals Section

### Finding “11” - Reasonable Efforts to Prevent Child's Removal from the Home.

#### General considerations:

- **AS WITH EVERY FINDING, BRIEF RATIONALE MUST BE PROVIDED.**
- There are two findings regarding reasonable efforts which are federally mandated: Reasonable efforts to prevent the child’s removal (Finding “11”) and reasonable efforts to achieve permanency (Finding “52”).
- This finding deals only with the reasonable efforts requirement to “prevent the child’s removal”.
- It is based on the **most recent time** the child entered out-of-home care.
- This involves a review of previous intakes, whether substantiated or not.
- There are financial implications for DHHS if the judge finds DHHS did not make reasonable efforts to prevent removal in his or her orders, so before we make this finding (recommendation) there must be supporting evidence and the rationale needs to be very clear.
- We are to be independent reviewers of each child’s case so we do not have to agree with the Judge’s findings. However, we certainly need to take into consideration the judge’s findings and explain why if we disagree.
- Considerations:
  - *If there have been multiple intakes and no services were provided, was that reasonable?*
  - *If there were multiple intakes, were appropriate services provided?*
  - *Was the response proportionate to the severity level of the allegations?*
  - *Were joint-custodial or non-custodial parents considered as a placement?*
  - If a child has been in care before and services were offered previously yet the child re-entered care, those previous services could, in some circumstances, be considered as reasonable efforts to prevent removal.
  - Prior services would not necessarily need to be for the same issue.
- Source documents could include SDM assessments, narratives on N-FOCUS, materials in the paper files, and reviews of previous intakes.
- This finding should be made whether the case involves court or not.

#### **11-1 DHHS made reasonable efforts to prevent the child's removal from the home or could not have prevented the removal due to exigent circumstances.**

- If there is documentation of services offered to the family prior to the child's current removal, the board needs to decide if the services were enough to constitute reasonable efforts.
  - In some cases there have been years and years of services to the family prior to the removal (more than reasonable).
  - In other cases there has been nothing offered for a dirty house and the child removed (no reasonable efforts).

- If the child is under court-ordered joint custody, there should be information available about consideration of the other parent as a placement.
- Cases where DHHS could not have prevented the removal could include:
  - Exigent circumstances, in other words circumstances requiring immediate action, circumstances that are urgent, or pressing circumstances. For example:
    - An assessment of situation following the removal of the child and a determination that the removal was necessary for the child's safety.
  - Cases where DHHS was not aware of the family situation prior to the circumstances requiring a removal for the child's safety.
- If there had been multiple intakes to CPS regarding the family over the course of time before action was taken to protect the child, the board should consider if reasonable efforts were really made to prevent removal, and should not automatically put every "emergency" situation under this finding, i.e., law enforcement removal of child. It is still important to look at the reasons for law enforcement removal and look at reasonable efforts to prevent removal.

**11-2 DHHS did not make reasonable efforts to prevent the child's removal from the home.**

- This is used if there is documentation or verbal update from the caseworker that services were not offered to the family prior to removal, but could have been.
  - Verbal updates need to be noted if they form part of the basis for a finding, and they may be weighted differently from other documentation if appropriate.
- There are financial implications for DHHS if the judge makes this finding in his or her orders, so there must be supporting evidence and the rationale needs to be very clear.

**11-3 The Court found that DHHS was not required to make reasonable efforts to prevent removal due to aggravated circumstances.**

- Aggravated circumstances include, but are not limited to: abandonment; torture; chronic abuse; sexual abuse; murder or manslaughter of another child; aiding or abetting in the murder or voluntary manslaughter of another child; or, committing a felony assault that resulted in serious bodily injury to another child of the parent. **This must be documented through a Court order.**
- If the board is requesting that the court file a termination under aggravating circumstances, then use the "11-1" finding until the Court has ruled on whether it has sufficient grounds to find aggravated circumstances.

**11-4 There is insufficient documentation to determine what efforts DHHS made to prevent the child's removal from the home.**

- There is no documentation or verbal information that any services were offered to prevent a removal that WAS NOT for an emergency situation. **The Review Specialist should attempt to locate this documentation prior to the Board meeting. Otherwise it would become one the Board's recommendations.** The board should ask for specific documentation.

## Safety & Appropriateness of Current Placement Section

### Finding “21” - Appropriateness and safety of current placement.

#### General considerations:

- Safety and appropriateness are assessed separately, however, are put together in this finding to mirror the language in Neb. Rev. Stat. 43-1308(b).
- Documentation to be considered includes home studies, placement reports, reports of GALs and caseworkers who have visited the homes, etc.
- The Legislature specifically mandated that you, as local board members, address safety and appropriateness in reviews to help ensure the child receives adequate care.
- As with every finding, rationale must be provided.

#### Considerations regarding Safety of Placement:

- **Do not assume** a placement is safe in the absence of an updated home study and appropriate written documentation regarding the child's progress in the placement.
- Licensed and/or agency homes are **required to provide written reports to DHHS on a monthly basis**. Judgment should be used if one or two such reports are missing.
- Relatives and kinship homes also should be reporting.
- This can be a place to comment on in-placement visits that are, or are not, occurring.
- Home studies for licensed foster homes need to be current within two years. If there is a temporary extension the recommendation should state that the extension was granted without an update.
- All foster placements, including relative placements, are required to have a home study completed on them. If documentation of the home study is not available for review, it needs to be requested by the review specialist.
  - A child can be placed in a relative or “kinship” placement (with someone known by the child prior to placement) as long as CPS/background checks have been completed and a walk-through of the home has occurred. However, a formal home study then needs to be completed within 30 days of placement of the child in the home.
  - Kinship placements (formerly called child-specific) were reinstated with legislation passed in 2013.
  - The board needs to consider:
    - *Is there a current home study?*
    - *Are the foster parents licensed?*
    - *How many biological, adopted, and foster children are in the home? What are their ages and needs?*
    - *Is the home physically safe?*
    - *If with a relative or kin, does that person have the willingness and ability to provide a safe, stable, and nurturing environment for the child?*

- For a child living in a group home, there may not be written documentation regarding safety practices available. **Therefore, Review Specialist should look up in N-FOCUS to inquire as to whether there are intakes regarding the child, intakes regarding the home, sanitary, or supervision issues that could impact safety.** Placement considerations can include:
  - *How many staff are on duty?*
  - *Do they have awake overnight staff?*
  - *Do they use restraints? If so, what type training regarding the use of restraints has their staff received?*
- Regardless of the type of placement, when determining whether a placement is safe, the board should consider:
  - *What is the mix of children in the placement?*
  - *What are the individual needs of the children in the placement?*
  - *Is there a need for safety plan for that particular child?*
    - For example, a youth with perpetration issues should have a safety plan that includes additional monitoring of that youth to ensure the placement can be considered safe for other children.

#### **Considerations regarding Appropriateness of Placement:**

- If there is an absence of information regarding the placement, it is essential that the board **does not assume** it is appropriate.
- Information used in making this finding can include a homestudy, reports of care and well-being in the home, etc. Judgment should be used when weighing the types of information available.
- A placement can be safe, but not appropriate to meet an individual child's needs for a variety of reasons.
- After commenting on the appropriateness of the current placement, comments can be made regarding custody issues and relative searches.
- The question "*Is this placement the **least restrictive placement** for this child?*" needs to be considered.
  - For example, if a child were placed in a group home on the sole basis that there was not an appropriate foster home available, the finding on inappropriate placement would be utilized. It would be appropriate to state that the board does not find this placement is the least restrictive placement for the child.
- Another question that needs the board's attention is "***Is this particular home appropriate for THIS particular child?***"
  - An example of this would be a case where the foster home is licensed, it is well known, the homestudy states the home is best suited for children under five, however the current case being reviewed shows a 17 year old placed there.
  - Or consider the case of a 16-year-old sexual perpetrator placed in a licensed foster home with younger children.
  - The placement may not be the appropriate one for that particular child, but utilized because it is the only home where a bed is available in that area, or at that time.

- If the review is on a child in a kinship home that has been approved, but the homestudy is pending, then the board will need to determine if it has enough other information on which to make the finding.

**21-1 The child's current placement appears appropriate and safe.**

- If there is an absence of information regarding the placement, it is essential that the board **does not assume** it is appropriate.

**21-2 The child's current placement appears unsafe and therefore inappropriate.**

- The board notes that a specific safety issue exists and is recommending the **immediate** removal of the child from the home unless a specific plan can be developed to keep the child safe. Specific rationale must be provided when making this finding.
- If the finding is made that the placement is unsafe, the Review Specialist should contact their supervisor and/or an FCRO Administrator immediately.

**21-3 The appropriateness and/or safety of the child's current placement could not be determined due to [a lack of documentation, homestudy, safety plan, or a change in placement that occurred since the file review, etc.].**

- Specify what was lacking.
- Homes that accept youth with developmental disabilities (Enhanced Family Homes/Host Families) rarely are licensed and there may not be home studies. If a homestudy is not located, this needs to be requested.
- The following language has been helpful to some boards.
  - "There was a lack of information/ documentation regarding the foster home in the case record. This is not a negative reflection on the care provided by the foster parents at this time, rather an indication of a lack of information."
  - "The board recommends that a home study of the foster placement and clarification if the foster home is licensed or approved be provided in the case record. Additionally, it is recommended that documentation about the child's progress in the placement be placed in the case record."

**21-4 The current placement appears safe, but is inappropriate due to [foster parents wanting only younger children, being more restrictive than necessary, the plan is adoption and the foster parents are not willing to adopt, etc.].**

- Rationale should be provided for making that specific finding.
- Examples:
  - Placement of a child in a residential treatment center may be safe but inappropriate if the child should be in a less restrictive environment.
  - If a child were placed in a group home on the sole basis that there is a lack of foster homes available, that placement would be inappropriate.
  - Long-term shelter or DCYC placements are also not appropriate for a child, especially if they are not receiving appropriate services while in that placement.
  - The plan is adoption or guardianship, but the child is not in a home willing to adopt or assume guardianship.

- Clarify if the reason for the lack of alternative placement is due to the lack of availability or the lack of Magellan approval for level of care.

**21-5 The appropriateness and/or safety of the child's current placement is unknown because the child is a runaway. [efforts to locate]**

- If the board makes this finding, the efforts or lack of efforts being made to locate the child should be summarized. It is DHHS policy that caseworkers/FPS are to immediately contact law enforcement when notified that a child is on run, and that they follow up with law enforcement on a monthly basis. These contacts are to be documented in the case narrative.
- Runaway status should also be in the top concerns.

## Important timeline

The following is a partial timeline of activities in a child’s case and how we measure activities required at certain points.

<b>Activity</b>	<b>Measured in Finding(s)</b>
<p>If the case is pre-disposition or voluntary, DHHS is required to develop a plan within 60 days.</p> <p>For cases at or after disposition, DHHS is required to submit a plan to the court prior to a disposition hearing, a dispositional review hearing, or a permanency hearing.</p> <p>The plan must contain certain things under federal and state law.</p>	<p>Finding 41 measures whether the plan DHHS developed by DHHS contains the minimal elements required by state and federal law.</p> <p>We make findings on the whether we agree with the plan under finding 51.</p> <p>For cases after disposition, we comment on the completeness of what the court ordered under finding 54.</p>
<p>The court creates its order at a dispositional hearing, dispositional review hearing, or permanency hearing. They can modify the plan that DHHS submitted in whole or in part. Regardless of what DHHS submits to the court, the court order needs to be complete.</p>	<p>Finding 54 measures whether the court-ordered plan was complete [not whether we agreed with that plan].</p>
<p>After the court hearing and until the next such hearing DHHS must comply with the court order. This is part of their requirement to make reasonable efforts towards permanency.</p>	<p>Finding 52 measures DHHS reasonable efforts to permanency.</p> <p>Finding 42 measures whether DHHS is ensuring the child’s safety.</p>
<p>The Court ordered plan goal needs to be appropriate.</p>	<p>Finding 51 measures the primary permanency objective, and Finding 61 measures the concurrent permanency plan goal.</p>
<p>Between court hearings, DHHS needs to provide ordered services.</p>	<p>Findings 31, 32, 34, 35, and 37 are on services.</p>
<p>Between court hearings, DHHS needs to comply with any ordered visitation and ensure sibling contacts (if appropriate) are maintained.</p>	<p>Findings 71, 72, 73, are on visitation.</p>
<p>Before the next court hearing, DHHS needs to prepare an updated or modified plan that they will then submit at the next court hearing.</p>	<p>Since the court hearing for this plan has yet to take place, this will not be measured until our next review. The proposed plan can be commented on as appropriate in the recs.</p>

## Services to Achieve Permanency Section

### Finding “31” & “34” Services court ordered for the Mother and the Father

#### General considerations:

- The purpose of the service findings are to indicate if needed and ordered services are being effectively offered.
- Services could be offered but refused or not utilized by the mother or father. With this finding we are not measuring compliance, rather the availability of needed court-ordered services. Compliance findings are separate to provide better statistics.
- Rather than repeating the explanation for each, code 31 is for mother, code 34 is for father.
- There is a difference between a legal father and a biological father. For example, the legal father could be an adoptive father, or paternity may not have been legally established yet.
  - If there is not a legal father, this finding would be made regarding services for a purported father.
  - Efforts to establish legal paternity need to be a focus and for abuse, neglect, or abandonment cases a top concern.
- If the alleged parent or a non-custodial parent is not included in the case plan, this finding can be used as a means to request that the alleged or non-custodial parent also be addressed.
- If there are multiple fathers involved, indicate father of \_\_\_\_, for each.
- Some board considerations:
  - *If a particular service has been court-ordered, is it occurring?*
  - *Are there services that are not court-ordered, but needed?*
  - *Are the services being offered in a way that takes into account language or cognition barriers, if any?*
  - *Are the services available in a realistic proximity to the parent or child?*
  - *Are there professional recommendations for certain services that are not being followed?*
  - *Are the services for the child being offered in a way that is age appropriate?*

#### **31/34-1 All court-ordered services regarding the mother/father are being offered.**

- If all services Court ordered or needed in order to achieve permanency are being offered, the board would choose this finding.

#### **31/34-2 Some court-ordered services regarding the mother/father are being offered.**

- The board would make this finding if only some of the needed services are being offered. The board should specifically note what is lacking and recommendations should be made for the facilitation of those services

#### **31/34-3 Court-ordered services regarding the mother/father are not being offered.**

**31/34-4 Court-ordered services regarding the mother/father do not apply due to [parental rights are not intact, parent deceased, parent unidentified, etc.].**

- Examples include:
  - parent location is unknown,
  - paternity is not established,
  - parental rights are not intact,
  - parent not identified,
  - parent is deceased,
  - there is a court order stating that reasonable efforts towards permanency are no longer required,
  - the child's adjudication status such as the child is in a 3b or 1 case and has not been ordered to services, and/or
  - the permanency objective no longer requires parental participation.

**31/34-5 There is a lack of [documentation/information] on which to base a finding regarding the offering of court-ordered services for the mother/father.**

- Specify what is missing. For example, due to “a lack of documentation regarding whether therapy has been offered.”

**31/34-6 Court ordered services to the mother do not apply due to [the case is a voluntary non-court case, disposition has not occurred, etc.]**

- Specify if any services are in place or are needed.

<b>Finding “32” &amp; “35” Parental compliance with court-ordered services</b>
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**General considerations:**

- The question here is whether the parent is making use of the services offered to address permanency.
- Rather than repeating the explanation for each, code 32 is for mother, code 35 is for father.
- If there are multiple fathers involved, indicate father of \_\_\_\_, for each.
- Compliance is not the same as completion. For example, a parent could be compliant with mental health treatment that may be ongoing in nature or be compliant with substance abuse treatment expected to last several more months.
- **Please note that we do not have compliance findings for the child.** This was a purposeful decision – **it is far too easy for the system to blame the child for their behaviors rather than address the factors that led to behavioral issues.** For example, if the system has moved a child 30 times, we need to consider if the system itself created many of the child's behaviors.
- Parents who are in prison/jail should be included in the child's plan. The plan can order such services as are available in the prison/jail and also order services for the parent upon their release from the institution. They need to be held accountable. It can also delay permanency if only after their release parents are ordered to services and given time to rehabilitate their parenting.

**32/35-1 The mother/father is compliant with all court-ordered services.**

- If the parent is substantially complying with all services Court ordered in order to achieve permanency the board would choose this finding.

**32/35-2 The mother/father is compliant with some court-ordered services but not with [service a, b, c, etc.]**

- If the parent is not substantially complying with every court-ordered service, use this finding. Be sure to indicate which service(s) are not being utilized by the parent.

**32/35-3 The mother/father is not compliant with court-ordered services.**

- If the parent is refusing every service court-ordered service, use this finding.

**32/35-4 The mother's/father's compliance with court-ordered services is not applicable due to [parental rights are not intact, court order not requiring reasonable efforts to reunify, parent has not been identified, parent deceased, a change of permanency objective, etc.].**

**32/35-5 There is a lack of [documentation/information] on which to base a finding regarding compliance with court-ordered services.**

- Indicate what was missing. For example, there is a lack of therapy notes, there is a lack of documentation regarding substance abuse treatment, etc.

**32/35-6 There are no court-ordered services due to [disposition has not occurred]. [You may comment on voluntary services, if any, here]**

<b>Finding "37" Services court ordered for the Child</b>
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**General considerations:**

- We do not have compliance findings for the child. This was a purposeful decision – it is far too easy for the system to blame the child for their behaviors rather than address the factors that led to behavioral issues. For example, if the system has moved a child 30 times, has the system itself created many of the child's behaviors.
- Use separate findings for each child if necessary. Be sure to indicate which finding corresponds to which child.
- Some board considerations:
  - *If a particular service has been court-ordered, is it occurring?*
  - *Are there services that are not court-ordered, but needed?*
  - *Are the services being offered in a way that takes into account language or cognition barriers, if any?*
  - *Are the services available in a realistic proximity to the child?*
  - *Are there professional recommendations for certain services that are not being followed?*
  - *Are the services for the child being offered in a way that is age appropriate?*

- 37-1 All court-ordered services regarding the child are being offered.**
- If all services court ordered are being offered, the board would choose this finding.
- 37-2 Some court-ordered services regarding the child are being offered.**
- The board would make this finding if only some of the services are being offered. The board should specifically note what is lacking and recommendations should be made for the facilitation of those services
- 37-3 Court-ordered services regarding the child are not being offered.**
- 37-4 Court-ordered services regarding the do not apply due to [the child being on runaway and their location being unknown.].**
- 37-5 There is a lack of [documentation/information] on which to base a finding regarding the offering of court-ordered services for the child.**
- Specify what is missing. For example, “a lack of documentation regarding whether therapy has been offered.”
- 37-6 Court-ordered services do not apply as this is a voluntary non-court case.**
- Specify if any voluntary services are in place or are needed.

## DHHS Plan Section

<b>Finding “41” –Case plan that DHHS submitted to the Court</b>
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### **General considerations:**

- DHHS must submit a plan to the court in court-involved cases at the disposition, dispositional reviews, and permanency hearings. If the case is pre-disposition or voluntary, DHHS is required to develop a plan within 60 days of removal. There are requirements for minimal elements to be present, which is what we are measuring here. Minimal elements include a permanency objective, and a description of timeframes, services, and who is responsible for which task.
- Although DHHS normally uses a particular format for their plan, there is no requirement that they do so.
- This finding measures the completeness of what DHHS has prepared. It does not measure whether the court adopted that plan or whether we agree with the plan. Those elements are measured elsewhere.
- In the narrative for this finding it should note which plan is being measured, by date.
- Neb. Rev. Stat. §43-285 requires the Nebraska Department of Health and Human Services to prepare and file with the court a proposed plan for the care, placement, services and permanency which are to be provided to the juvenile and his or her family. DHHS is required to complete a Safety Assessment. This is utilized as the case plan for the first 60 days. A case plan must then be written.
- For youth who are 16 and older, their plans must contain specific goals and objective for gaining independent living skills training. A statement in the plan that says, “independent living skills included” is insufficient to meet this requirement.

**41-1 DHHS prepared a complete plan with services, timeframes, and tasks. [give date of plan]**

- If a case plan has a permanency objective, updated target dates, timeframes, tasks and services listed in it, and independent living section for age 16 and older, it is a complete plan.
- Remember to commend the case manager where appropriate.

**41-2 DHHS prepared an incomplete plan as it lacked [services, timeframes, tasks]. [give date of plan]**

- If a case plan was missing one or more of the required elements (permanency objective, target date, timeframes, tasks or services), it is an incomplete plan.
- Document what was missing from the plan.

**41-3 There is a written DHHS plan but it is more than 6 months old so it needs to be updated.**

**41-4 DHHS did not prepare a plan.**

## **Finding “42” – Has DHHS Evaluated the Safety of the Child and has DHHS Taken the Necessary Measures in its Plan to Protect the Child?**

### **General considerations:**

- This finding is made based on the **PLAN** submitted by DHHS to the courts. That plan may not match what the court subsequently ordered.
- All placement issues go under the “21” Finding.
- In assessing the safety “in the DHHS plan,” evaluate the services outlined in the DHHS plan to determine if they are all in place, and if in place, would the child be safe.
- The board should assess the current, as well as the future, safety of the child by asking the following questions:
  - *Is there domestic violence in the home?*
  - *What is the support system in the home, is the family isolated from support, is there someone the child can go to in an emergency?*
  - *What is the age and ability of the child to remove himself/herself from the situation? Are there diminished physical, developmental, or cognitive factors that need to be considered?*
  - *Is there an escape plan?*
  - *Is there cyclical mental illness present?*
  - *Are drug and alcohol issues present?*
  - *Does the parent have the ability to demonstrate empathy toward the child; can they put themselves in the child’s place?*
  - *Are the children supervised before/after school?*
  - *Who else is in the home?*
  - *What is the past behavior of the parents?*
  - *Does the safety plan align with information on the SDM assessments?*
  - *Are there adequate safeguards during visitation?*
- The board should base this finding on the documented efforts that have been made to ensure the safety of the child.
- **Do not assume that the safety of the child has been evaluated without documentation to support the evaluation.**

### **42-1 DHHS evaluated the safety of the child and took necessary measures in the plan to protect the child.**

- Do not assume that the safety of the child has been evaluated without documentation to support the evaluation.

### **42-2 DHHS has not evaluated the safety of the child and taken the necessary measures in the plan to protect the child. The following needs to occur [domestic violence needs to be addressed, a support system needs to be put in place, there needs to be an escape plan, there needs to be before and after school supervision specified, there needs to be adequate safeguards during visitation, etc.].**

- Specify what more is needed.

### **42-3 It cannot be determined if DHHS evaluated safety and took necessary measures in the plan due to [a lack of documentation, lack of a plan, lack of efforts to find a runaway, etc.].**

- Some examples of when to use this include:

- if the documentation is missing or not made available for review,
- if the child has been on runaway status since the last case plan to the court and that plan does not outline means being utilized to determine the child's location.
- When using this finding, state what conditions exist that makes it difficult for the board to make this finding.
- If it cannot be ascertained that the safety of the child has been evaluated, this needs to be in the top concerns.

## Court Ordered Primary Objective Section

### Finding 51 – Appropriateness of Court Ordered Primary Objective.

#### General considerations:

- **DHHS must submit a plan to the court in court-involved cases.** The court can accept, reject, or modify the plan. **This finding is about the plan ordered by the Court.**
- Plans ordered by the court supersede plans introduced by DHHS but not ordered by the court.
- Nebr. Supreme Court in Re Interest JDM 230 NE 273, (1988) may be used. This is a case where the mother and father were both found guilty and sentenced to the Penitentiary for abuse of a 5 week old baby. Subsequent to this, the mother became pregnant again. The Court terminated rights on both children, even though there was no abuse to the second child. The Court found that “Even though the father has had no unsupervised contact with the child, it is not necessary that the Court await the time the child shows permanent scars of the father’s anger and impulsivity before acting to terminate the relationship.”
- Findings will be based on the most recent **court ordered** plan available/provided at the time of review.
- The findings must correlate with the plan listed on the front page of the recommendations.

#### **51-1 The court ordered primary permanency objective is appropriate.**

- This finding does not always mean that the board thinks that the child should return home immediately. The following language could be used in that situation:
  - “The board agrees with the permanency objective of reunification, but finds that to return the child home at this time would not be in the child's best interests due to....”
  - “While the board finds the parents should be given an opportunity to rehabilitate, returning the child home at this point would place the child at risk.”

#### **51-2 The court ordered primary permanency objective is not appropriate due to [being outdated, recent changes in circumstances, the parents having now relinquished, a court order terminating parent rights being finalized, etc.]**

- Specific reasons based on written documentation must be given. Then an alternate permanency objective for the family/child should be recommended.

#### **51-3 There cannot be a finding on the appropriateness of the court ordered primary permanency objective because the case has not been adjudicated.**

#### **51-4 It cannot be determined whether the court ordered primary permanency objective is appropriate due to [recent changes in circumstances, waiting for an evaluation or assessment, etc.]**

- Ask that whatever is unclear be clarified. For example, need more documentation about a specific topic, or it cannot be determined because the parents need more time to work on the conditions that led to removal.

**51-5 The court does not contain a permanency objective.**

**51-6 There cannot be a finding on the appropriateness of the court ordered primary permanency objective because this is a voluntary non-court case.**

<p><b>Finding “52” - Reasonable Efforts to Achieve Primary Permanency Goal</b></p>
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**General considerations:**

- **This finding addresses services ordered by the court and provided by DHHS in order to facilitate the primary permanency objective - whether it is reunification, guardianship, adoption or independent living.**
- DHHS needs to make efforts toward whatever permanency goal the court has adopted. In other words, state whether or not DHHS is doing its job to ensure that services are provided and barriers to receiving these services are removed. This is true whether or not DHHS contracts with a lead agency for services. (Concurrent planning is discussed with findings 61, 62, and 63)
- The board needs to determine that services are being offered in a timely manner in order to facilitate the permanency objective and correct the reason that the child being reviewed entered out of home care.
- Parent/child compliance is not what is being measured here. That is measured under 43 Finding.
- Case situation:
  - If the child entered out-of-home care due to failure to thrive, yet no services are being offered to the parent to address the failure to thrive, such as nutrition classes, are reasonable efforts being made to correct the situation?
  - If the permanency objective is Adoption and steps are not being taken to locate an adoptive placement, then reasonable efforts are not being made.
  - Sometimes the same "canned response" case plan is used for every case, regardless of the reason the child entered out-of-home care.

**52-1 DHHS is making reasonable efforts towards the court ordered primary permanency objective.**

- This would be used if appropriate court-ordered services are being offered to the parents and the child, and those services are accessible and affordable.

**52-2 DHHS is no longer working towards the court ordered primary permanency objective due to [the unexpected death of a parent, a recent change in circumstance, parent being deported, etc.] but is working toward the concurrent goal.**

- An example of when this might be used is if in the period since the court order was made the parents relinquished rights and DHHS is now working toward the concurrent goal of adoption or guardianship.

**52-3 DHHS is not making reasonable efforts towards the court ordered primary permanency plan.**

- If there is information that services are not being provided to return the child home, yet the plan is reunification, this finding would be used. **Give the rationale.**
  - For example, there may be a case in which it needs to be cited that a professional has recommended that mother/father complete treatment X in order to address issue Y, which was one of the reasons that the child entered care; however, there is no documentation that the service has been sought.
  - Or services ordered by the court are not being provided to the parent and/or the child.

**52-4 It cannot be determined what efforts DHHS is making toward the court ordered primary permanency objective due to [a lack of documentation, recent case management changes, etc.].**

- Indicate what is unclear and ask for clarification.

**52-5 There cannot be a finding on DHHS efforts towards the court ordered primary permanency objective because this is a voluntary non-court case.**

**52-6 There cannot be a finding on DHHS efforts towards of the court ordered primary permanency objective because [the court order does not contain a primary permanency objective, disposition has not occurred, etc.]**

<p><b>Finding “53” - Progress Toward the Court Ordered Primary Permanency Objective.</b></p>
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**General considerations:**

- This finding gives the board the opportunity to comment on the recent progress of the case during the previous six months, based on documentation.
- Consider the big picture. If there is progress on a majority of issues/services, then there is progress being made. Progress is forward momentum, not completion of everything needed for permanency to occur right now.
- Progress is more than just attending services and "jumping through the hoops".
- If there are two parents with different levels of progress, local boards will need to consider whether overall there is progress towards permanency.
- Examples of wording that may be considered:
  - “While there is documentation that the parents are attending (therapy, parenting classes, etc.) reports indicate that the parents continue to deny abuse, minimize abuse, are not engaging in the program or services, etc. Therefore, the board finds no progress is being made towards reunification.”
  - “Although the mother has attended visitation within the last 2 weeks, she has not attended any visitation in the 5 months prior.”
- Progress or lack thereof can also be reflective of other system barriers such as not transferring the case to the adoption worker, not filing for termination, no court reviews, not getting subsidy paperwork done etc.

- The aim here is to identify barriers to permanency and get them addressed.

**53-1 Progress is being made towards the court ordered primary permanency objective.**

- If the board finds that the family is making any progress towards the permanency objective, this finding would be used.
- It may be appropriate to state after the finding that parents are making progress but more time is needed to complete services.
- Also, if the plan is adoption or guardianship, consider what is being done to facilitate that goal.

**53-2 Some progress is being made towards the court ordered primary permanency objective.**

- Make sure that the recommendation includes what needs to occur to make more progress towards permanency.

**53-3 No progress is being made towards the court ordered primary permanency objective.**

- If the plan is reunification, there must be documentation of parental non-compliance **in the majority of services** and/or lack of progress towards the permanency objective.
- This would be an appropriate place to reiterate what needs to occur, such as “the mother has been ordered to attend AA, yet has not provided documentation that this is occurring. Further, the mother has missed several appointments for UA testing.”
- Or, a referral for an adoptive home study has not been made and the adoption paperwork has not been completed.
- If there is no progress, this needs to be reflected in top concerns, and the Review Specialist and their Supervisor will need to discuss how to effectively advocate for this child.

**53-4 It cannot be determined if progress is being made toward the court ordered primary permanency due to [lack of documentation, recent case management changes, etc.].**

- State what is needed for the board to be able to make a more definitive finding.
- This needs to be reflected in top recommendations (concerns) and the Review Specialist and their Supervisor need to discuss how to effectively advocate for this child.
- If it is due to the lack of documentation, be specific as to what documentation is required in order to make a finding.

**53-5 There cannot be a finding on progress towards the court ordered primary permanency objective because this is a voluntary non-court case.**

**53-6 There cannot be a finding on progress towards the court ordered primary permanency objective because [the court order does not contain a primary permanency objective, disposition has not occurred, etc.]**

## Finding “54” – Completeness of the Court Ordered Plan

### **General considerations:**

- DHHS is to assist the courts by creating a proposed plan for the child. However, this does not relieve the court of its duty to assure that the plan it court orders is complete.
- Per Neb. Rev. Stat. 43-1312, the plan for the child shall contain at least the following:
  - The purpose for which the child has been placed in foster care.
  - The estimated length of time necessary to achieve permanency.
  - A description of the services which are to be provided.
  - The person(s) directly responsible for the implementation of the plan.
  - A complete record of previous placements of the foster child.
  - The name of the school the child will attend.
- Per federal requirements, the case plan needs to address the services to be provided to the parents, child, and foster parents that will improve conditions in the parental home, facilitate the return of the child (if in the child’s best interests) and address the needs of the child while in foster care.
- If the youth is age 16 or older, there must be a description of the services and programs to help him or her transition to independent living.
- A plan needs to list the services, timeframes, and tasks so that all parties are clear as to expectations and to provide measures by which progress can be determined.

**54-1 The most recent court order contains a plan is complete with services, timeframes, and tasks specified.**

**54-2 The most recent court order contains a plan that is incomplete as it lacks [timeframes, tasks, services, independent living plan for a child age 16 or older, etc.].**

**54-3 There is no court order that contains a plan.**

**54-4 There cannot be a finding on whether the court order contains a complete plan due to [this case being a voluntary case, disposition has not occurred, etc.]**

## Court Ordered Concurrent Objective Section

### Finding 61 – Appropriateness of the Court-Ordered Concurrent Permanency Objective

#### General considerations:

- **DHHS must submit a plan to the court. This plan may, or may not, include a concurrent permanency objective. The court can accept, reject, or modify the plan.**
- **This finding is about the concurrent plan ordered by the Court.**
- The board can acknowledge that DHHS policy is to first pursue reunification and then comment on the appropriateness of that policy in relation to the particular case being reviewed.
- Findings will be based on the most recent court ordered concurrent plan available/provided at the time of review.
- The findings must correlate with the concurrent plan listed on the front page of the recommendations.
- In some areas judges never order concurrent plans. That does not mean that the board cannot make a finding that a concurrent plan would be appropriate.

**61-1 The court ordered concurrent permanency objective is appropriate.**

- This finding does not always mean that permanency should occur immediately.

**61-2 The court ordered concurrent permanency objective is not appropriate due to [no longer being required, being outdated, recent changes in circumstances, the parents having now relinquished, a court order terminating parent rights being finalized, etc.]**

- Specific reasons based on written documentation must be given. Then an alternate permanency objective for the family/child should be recommended.

**61-3 The court did not order a concurrent plan, however, the board recommends a concurrent plan of [insert] be ordered.**

- Specify what the board recommends as a concurrent plan and why.

**61-4 The court did not order a concurrent plan, and the board agrees that a concurrent plan is not necessary.**

**61-5 There is insufficient documentation to determine if the court ordered concurrent permanency objective is appropriate.**

- Ask that whatever is unclear be clarified. This needs to be a top concern.

**61-6 There cannot be a finding on the appropriateness of the court ordered concurrent permanency objective because this is a voluntary non-court case.**

**61-7 There cannot be a finding on the appropriateness of the court ordered concurrent permanency objective because disposition has not occurred.**

## Finding “62” - Reasonable Efforts towards the Court Ordered Concurrent Objective

### **General considerations:**

- This finding addresses services provided by **DHHS** in order to facilitate the court ordered concurrent permanency objective. In other words, state whether or not DHHS is doing its job to ensure that services are provided and barriers to receiving these services are removed. This is true whether or not DHHS contracts with a lead agency for services.
- The board needs to determine that services are being offered in a timely manner.
- Parent/child compliance is not what is being measured here.

**62-1 DHHS is making reasonable efforts towards the court ordered concurrent permanency objective.**

- This would be used if appropriate services are being offered to the parents and the child, and those services are accessible and affordable.

**62-2 DHHS is no longer working towards the court ordered concurrent permanency objective due to [the unexpected death of a parent, a recent change in circumstance, parent being deported, etc.].**

**62-3 DHHS is not making reasonable efforts towards the concurrent permanency plan.**

- If there is information that services are not being provided towards the concurrent goal this finding would be used. Give the rationale.
- This needs to appear in the recommendation as a barrier.

**62-4 No findings can be made on reasonable efforts towards the concurrent permanency objective as there is no court ordered concurrent plan.**

**62-5 There cannot be a finding on DHHS efforts towards the court ordered concurrent permanency objective because this is a voluntary non-court case.**

**62-6 There cannot be a finding on DHHS efforts towards the court ordered concurrent permanency objective because this disposition has not occurred.**

**62-7 It cannot be determined what efforts DHHS is making toward the court ordered concurrent permanency objective due to [a lack of documentation, recent case management changes, etc.].**

- Indicate what is unclear and ask for clarification.

## **Finding “63” - Progress Towards the Court ordered Concurrent Permanency Objective.**

### **General considerations:**

- This finding gives the board the opportunity to comment on the recent progress towards the court ordered concurrent plan during the previous six months, based on documentation.
- Progress can also be reflective of other system barriers such as not transferring the case to the adoption worker, not filing for termination, no court reviews, not getting subsidy paperwork done etc.
- The aim here is to identify barriers to permanency and get them addressed.

### **Information regarding individual findings:**

**63-1 Progress is being made towards the court ordered concurrent permanency objective.**

- If the board finds that progress is being made towards the concurrent objective, this finding would be used.

**63-2 Some progress is being made towards the court ordered concurrent permanency objective.**

**63-3 No progress is being made towards the court ordered concurrent permanency objective.**

- This would be an appropriate place to reiterate what needs to occur, such as family finding, completion of a service, or paperwork completion.
- If there is no progress, this needs to be reflected in top concerns, and the Review Specialist and their Supervisor will need to discuss how to effectively advocate for this child.

**63-4 There is a lack of documentation regarding whether progress is being made toward the court-ordered concurrent permanency objective.**

- State what is needed for the board to be able to make a more definitive finding.
- This needs to be reflected in top recommendations (concerns) and the Review Specialist and their Supervisor need to discuss how to effectively advocate for this child.

**63-5 No finding can be made regarding progress toward the concurrent permanency objective because there is no court ordered concurrent plan.**

**63-6 There cannot be a finding on progress towards the court ordered concurrent permanency objective because this is a voluntary non-court case.**

**63-7 There cannot be a finding on progress towards the court ordered concurrent permanency objective because disposition has not occurred.**

## Visitation/Parenting Time Section

### Findings 71 & 72- Parental Visitation/Parenting Time

#### **General considerations:**

- Finding 71 is for the mother and finding 72 is for the father.
- If there is no legal father, the finding for the father can be made on the purported father. Efforts to establish paternity need to be commented on.
- DHHS has a standard form for a written visitation plan (Parenting Time). Some DHHS offices utilize this form and some do not.
- It is important to document the frequency and length of visitation in the findings section to ascertain if it is adequate contact. Keep in mind the child's age, length of time in care, supervision status, and what the permanency plan is.
- If there is information regarding barriers to visitation (lack of visitation specialists, transportation issues) be sure to indicate and place in the top concerns for the case.
- A separate finding will be made for each parent involved in the case.
- Incarceration does not necessarily severe the rights to visitation with a child if the parental rights are intact.
- Never assume without documentation that a child is having supervised visits.

#### **71/72- 1 Visitation with (mother/father) is occurring as ordered**

- Determine if the Court has adopted the DHHS visitation plan, or ordered one of its own. DHHS does not have the authority to determine or place restrictions on parental visitation. Parental visitation rights are a matter for judicial determination per C.A. 235 Neb 893,457 NW 2d 822 (1990).
- This finding would be used if a visitation plan has been ordered and visitation is occurring as ordered by the Court.
- Some Courts order "reasonable supervised visitation" and leave it up to DHHS to determine the frequency and duration of contact. If the board does not find that the current visitation plan is in the child's best interest (too much or not enough contact, or safety issues), this should be described here and specific rationale given.
- This would include if the mother or father regularly attends visits or calls in advance to reschedule or if the parent only occasionally misses visits.

#### **71/72- 2 Visitation with (mother/father) is not occurring as ordered.**

- If visitation is not occurring as was ordered by the Court, this finding should be used.
- Be sure to clarify if the lack of visitation is due to parental non-compliance, referrals not completed by DHHS, or cancellation by the visitation worker.
- The board should note what is not occurring and who is the responsible party.
- This would include if the mother or father misses or cancels a substantial number of visits or results at the last minute.

#### **71/72- 3 There is no visitation with (mother/father) due to a no contact order.**

- In some cases of extreme abuse/neglect or sexual abuse, the Court may order no contact between the child and parent. At that point this finding would be used. The board should indicate if they support the no contact order and give its rationale.

**71/72- 4 There is a lack of [documentation/information] on which to base a finding regarding visitation with (mother/father).**

- If there is no documentation/information to indicate the frequency, duration, or outcomes of visitation between the parent and the child use this finding. The board should request that a formal visitation plan be developed and court ordered. The board may suggest an appropriate visitation plan. A written visitation plan should specify the frequency, length, and supervision of the visits.

**71/72- 5 Visitation with (mother/father) is not applicable due to [rights no longer intact, parent deceased, etc.].**

- Give the reason(s) that this is not applicable, such as parent is deceased, parental rights are no longer intact, paternity has not been established, etc.
- If the plan is not reunification, there may be times when visitation is still applicable. For example, there may still be visitation while waiting completion of a guardianship, or for youth with a plan of independent living. In those cases do not use this option.

**71/72- 6 The court has not addressed visitation with (mother/father).**

- Use this code if the case meets all of the following criteria:
  - The child is adjudicated 3a.
  - The court has not ordered visitation.
  - The court has not issued a no-contact order.
  - Parent rights are intact.
  - Maternity/paternity has been established.
- If the case meets the above criteria, give a recommendation of what, if any, visitation would be appropriate. Also, note if it does not appear to be in the child's best interest to have any type of visitation with the parent. For example of the parent incarcerated for life and the child has never had a relationship with the parent.

**71/72 -7 Visitation is occurring by voluntary agreement.**

- Use this for voluntary cases.

**71/72 -8 Visitation is not occurring and the case is voluntary.**

- Use this for voluntary cases.

## Finding “73” - Sibling Visitation.

### **General considerations:**

- Keep in mind that siblings could include half-siblings, stepsiblings, and others with whom the child has a significant or similar relationship (such as cousins raised together).
- This finding can be used for siblings in separate foster placements, or for siblings remaining in the home.
- If the plan is reunification, and siblings remain at home, it is important to keep the bond intact and document how the children interact.
- Do not assume that sibling visitation is occurring during parental visitation.
- It may be necessary in some cases to recommend sibling visitation be separate from parental visitation.
- Remember that the Court cannot order sibling contact if a sibling has achieved permanency through adoption/guardianship, or if the sibling is over the age of majority. However, efforts to keep sibling bonds intact with adult siblings can and should be made unless not in the child’s best interests.
- If a child’s behaviors are dangerous or disruptive to visitation, visits can occur in a therapeutic environment. Visits should not be discontinued without a court order.
- Some of the changes to these findings from previous versions were made to better facilitate statistical analysis.

**73-1 The child has no siblings, so efforts to facilitate sibling contact are not applicable.**

**73-2 The child had no pre-existing relationship with a sibling so efforts to facilitate contact are not applicable. [because father reportedly has two children in Iowa but the child has never met them, child has older siblings who were placed for private adoption before this child was born].**

- Some other examples could be:
  - Child has never met his/her half-siblings.
  - Child had no relationship with mother’s older children who live with mother’s aunt and uncle.

**73-3 Sibling contact is not occurring due to a court order prohibiting contact.**

- Indicate if the board agrees or disagrees with this decision, and provide rationale.

**73-4 Siblings are placed together, which facilitates relationships.**

**73-5 Regular contact is being facilitated with the siblings.**

**73-6 Regular contact with siblings that is needed to maintain relationships is not being facilitated due to [visits not being arranged, phone contact not being arranged, issues with visitation supervision, etc.].**

- Use this when efforts to allow contact are not being facilitated for other than the reasons above.
- This could be a place to comment if the child has adult siblings with whom contact needs to be facilitated.

**73-7** There is insufficient documentation to determine the status of sibling contacts.

- Request that it be clarified.

**73-8** Attempts were made to facilitate visitation, however [siblings are not state wards and the parent refused contact, siblings are adults and chose not to have contact, siblings are adults and location is unknown, siblings have been adopted and adoptive parents refuse contact, etc.]

**73-9** Contact is being maintained with some, but not all siblings. [explain]

## Continued Need for Out-of-Home Care Section

### Finding “81” - Need for Out-of-Home Placement

(Based on the N finding)

**81-1 The board finds that there is a continued need for out of home placement.**

- This is for any case where there are barriers to permanency other than adoption or guardianship (see finding 91-3).
- This could include plans of reunification, independent living, etc.

**81-2 The board finds that there is no longer a need for out of home placement and the child should be returned to parent(s).**

This finding should be used if the board finds that the child no longer needs to be in foster care and could be safely returned home immediately. This needs to be a top concern.

**81-3 The board finds that there is no longer a need for out of home placement and the child’s adoption, guardianship, or other permanency should be finalized.**

- This finding should be used if the board finds that the child no longer needs to be in foster care.
- Barriers to the adoption, guardianship, etc. should be in the top concerns section.

## TPR and Alternative Permanency Section

### Finding “91” - Recommending an Alternate Permanency Plan

Based on former “O” findings

**General considerations:**

The Nebraska Foster Care Review Act (§43-1308) requires the board to recommend a specific alternate permanency plan, if the board finds that it is unlikely that the child will return home.

- Unless there is evidence that can be cited that return is not possible, in most cases it should be considered that a return to the parents is possible. For example,
  - If the parental rights are no longer intact, obviously the return of the child is not likely.
  - If a TPR hearing has been set, then the return to the parents may not be likely.
  - If the parents have made no progress in spite of multiple services over the course of a year or more, return may not be likely.
  - If the parent is working towards sobriety and it is early in the case, at this point in time return to the parents may be possible.

**91-1 Return of the child to the parents is likely or possible.**

- This finding should be made when documentation indicates that reunification is likely and appropriate.
- Some boards have found it helpful to use the following wording to expand this finding “should the parents continue to make significant progress toward their court ordered goals.”

- 91-2 Return of the child to the parents is NOT likely and the board recommends referral for termination of parental rights and/or completion of adoption.**
- Use if the board finds that progress is not being made toward reunification and the child’s best interest would be met through alternative permanency.
  - Use the wording “completion of” in cases where parental rights have already been severed (voluntarily or involuntarily).
- 91-3 Return of the child to the parents is NOT likely and the board recommends referral for guardianship.**
- When considering guardianship it will be important to consider the age of the child, and the possibility of loss of eligibility for items such as the former ward program, social security dependent payments, and/or Medicaid eligibility.
  - It is not necessary to terminate parental rights in order to achieve a guardianship.
- 91-4 Return of the child to the parents is NOT likely and the board recommends placement with a relative in other than an adoption or guardianship.**
- This option is in the statute. This finding is used if recommending a long-term placement with a relative that does not involve an adoption or guardianship.
- 91-5 Return of the child to the parents is NOT likely and the board recommends a planned, permanent living arrangement other than adoption, guardianship, or placement with a relative. [Describe. i.e. independent living or self-sufficiency]**
- This includes not only independent living, but can include self-sufficiency with supports for those youth who are lower functioning and who may not be appropriate for either guardianship or adoption.

<p><b>Finding “92” - Grounds for Termination of Parental Rights</b></p>
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<p>Based on former “P” findings</p>
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**General considerations:**

- **The Nebraska Foster Care Review Act (§43-1308) requires that board make a finding regarding whether grounds for termination of parental rights under section 43-292 appear to exist.** Boards should be specific to both biological parents when choosing findings relating to Termination of Parental Rights. *Reminder: There must be a legal basis for this finding.*
- Parental rights should not be involuntarily severed without good cause and due process. If the board recommends that TPR be pursued, it needs to clearly articulate on what basis this serious action should occur. Sometimes even though the case is not making progress toward reunification there is insufficient evidence for the County Attorney to successfully argue the case through the anticipated appeal of the court’s decision. This can be frustrating for both local boards and FCRO staff.
- **Keep in mind that not only must one of the elements listed in 43-292 exist, but also termination of parental rights must be in the child’s best interest.**

- The following are the grounds for termination as listed in statute, along with an explanation of how this applies to the findings:

**43-292[1] abandonment prior to filing petition**

The parents have intentionally abandoned the juvenile for six months or more immediately prior to the filing of the petition. To determine this, there must either be no contact for six months, or no **SUBSTANTIAL** contact. One visit, or even a few visits/phone calls are not enough to be considered substantial contact. Also, in the case of purported fathers, he must have had reason to know or believe the child existed and that he could be the parent.

**43-292[2] substantially and ...repeatedly neglected and refused to give the juvenile or a sibling...parental care and protection**

The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection.

**43-292[3] parents are financially able but willfully neglected to provide...**

The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment was ordered by the court.

**43-292[4] parents unfit...debauchery...liquor..drugs..lewd and lascivious behavior...**

The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well being of the juvenile

**43-292[5] parents unable...mental illness or mental deficiency...**

The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to find that such condition will continue for a prolonged indeterminate period.

**43-292[6] (3)(a) of §43-247...reasonable efforts...under section 43-283.01, ... have failed to correct...**

Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination.

The County Attorney must be able to prove that DHHS has provided reasonable efforts to reunify in the case in order to utilize this provision.

**43-292[7] ... in an out-of-home placement for fifteen or more months of the most recent twenty-two months**

The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months. Remember that best interests needs to be proven also.

If a child returns home for at least six months, the “clock” starts over and the fifteen months starts to be counted over again.

**43-292[8] parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury**

The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury. The key here is “serious.” If the board is considering this reason, there needs to be a discussion of why the abuse is “serious.”

**43-292[9] ... aggravated circumstances, ..., abandonment, torture, chronic abuse, or sexual abuse**

The parent of the juvenile has been found by a court to have subjected the juvenile to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. See the appendix for more information about aggravated circumstances.

**43-292 (10) parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent.**

**43-292(11) one parent has been convicted of felony sexual assault of the other parent under 28-319.01 or 28-320.01 or a comparable crime in another state.**

**92-1 Grounds for termination of parental rights appears to exist under the following subsections of §43-292 and termination of parental rights is in the child’s best interest.** (List applicable subsections of §43-292)

- The board must identify all subsections of §43-292 that apply and give rationale.
- For each of the grounds, it must also be proven that this would be in the child’s best interests.
- The 15 of 22 months provision must be accompanied by another section and best interests of the child.

**92-2 Grounds for termination of parental rights under §43-292 do not appear to exist.**

- This finding is used when there are not yet grounds to terminate parental rights.

**92-3 Grounds for termination of parental rights appears to exist; however, termination of parental rights is not in the best interests of the child due to [\_\_explain\_\_].**

- Be sure to list the reason for finding a termination not in the child’s best interests. Some examples of those reasons could be the age of the child, the bond that exists between the child and the parents, or the progress being made by the parents. In some case circumstances, such as when the child is working out issues through therapy, it may be appropriate to add “at this time” to the finding.

**92-4 The board’s finding on whether the grounds for termination of parental rights appear to exist is not applicable due to [explain].**

- Examples, parents are deceased; parental rights have already been relinquished or terminated, or the child is adjudicated 3b or a 1.

## Top Concerns Section

### Top Concerns

Top Concerns and barriers should focus on what currently exists that prevents permanency from occurring.

Top Concerns and barriers will be identified by local board members in the form of open-ended questions from the review specialist.

Review specialists will code the barriers and concerns identified for statistical purposes; these will be the same as those in the top concerns section of the recommendations form.

## Other Helpful Information

**The following are some court citations that may be helpful when documenting issues.**

"It is not necessary that the court await until the child shows permanent physical scars before the court can act to terminate parental rights." *In re Interest of J.B. and A.P.* 235 Neb 74, 453 N.W.2d477 (1990)

"It is true that, fortunately, neither the father nor the mother has had an opportunity to have this child in his or her care. Therefore, there is no evidence of any harm having as yet befallen the minor. However, a court need not await certain disaster to come into fruition before taking protective steps in the interest of a minor child". *See In re Interest of S.L.P.*, 230 Neb 635,639 (1988)

"Even though the father has had no unsupervised contact with the child, it is not necessary that the Court await the time the child shows permanent scars of the father's anger and impulsivity before acting to terminate the relationship." *In re interest JDM* 230 NE 272, (1988)

"Parental obligation is a positive duty, which encompasses more than a financial obligation. It requires continuing interest in the child and a genuine effort to maintain communication and association with that child. Abandonment is not an ambulatory thing, the legal effects of which a parent may dissipate at will by token efforts at reclaiming a discarded child." *In Re Interests of J.M.D.*, 233 Neb 540 (1989).

"Although termination of parental rights may sometimes appear cruel or harsh, experience has shown that failure to terminate parental rights in appropriate cases simply punishes the child for the uncorrectable deficiency of the parents, thereby extending the same problems and conditions into successive generations." *In Re Interest of C.A.A. and V.S.A.*, 229 Neb 135, 138-39 (1988).

"Where a parent is unable or unwilling to rehabilitate him or herself within a reasonable time, the best interests of the children require termination of the parental rights." *In Re Interest Ty M. & Devon M.* 265 Neb. 150, 665 N.W.2d 672 (2003).

"A child should not be left suspended in foster care and should not be required to exist in a wholly inadequate home. Further, a child cannot be made to await uncertain parental maturity." *In Re Interest of JS, SC, and LS*, 224 Neb 234 (1986).

## Aggravated Circumstances

In cases where the parent has subjected a juvenile to “aggravated circumstances” as defined by statute, prosecutors can request the court to make a finding that will excuse the State from its duty to make reasonable efforts to preserve and reunify the family.

The phrase “aggravated circumstances” has been judicially interpreted to mean that the nature of the abuse or neglect is so severe or repetitive that reunification with the child’s parents jeopardizes and compromises the child’s safety and well-being.

Boards can identify the existence of factual grounds upon which the court can make a determination that reasonable efforts to preserve and reunify the family are not required. Where such grounds exist, local boards can also recommend that the appropriate parties take the necessary steps to obtain such a finding from the court. For example, such a determination can be requested from the court in the initial petition filed by the State, or in a motion subsequently filed by either the State or the juvenile’s guardian ad litem.

The element of “aggravated circumstances” also constitutes a separate statutory ground upon which termination of parental rights can be sought immediately. Neb. Rev. Stat. §43-292(9) authorizes the court to terminate parental rights when the parent of the juvenile has subjected the juvenile to “aggravated circumstances,” including, but not limited to, abandonment, torture, sexual abuse, or chronic abuse.

Note that the “aggravated circumstances” under Neb. Rev. Stat. §43-283.01 and the “aggravated circumstances” under Neb. Rev. Stat. §43-292(9) are in substance the same, but do differ in this respect: subjection of either the juvenile **or another child of the parent** to aggravated circumstances will suffice to relieve the State from its duty to make reasonable efforts under Neb. Rev. Stat. §43-283.01, while parental rights can be terminated under Neb. Rev. Stat. §43-292(9) in the situation where the parent has subjected **only the juvenile himself or herself** to aggravated circumstances.

In other words, the fact that the parent has subjected another one of his or her children to aggravated circumstances (but **not** the juvenile who is the subject of the court proceeding) will not provide a sufficient basis upon which to terminate parental rights under Neb. Rev. Stat. §43-292(9).

The following are some language examples that relate to the issue of aggravated circumstances:

- The board finds that aggravated circumstances exist in this case and that termination of parental rights should be pursued in regard to both parents, or, at a minimum, that grounds exist upon which the court can determine that reasonable efforts are not required under Neb. Rev. Stat. §43-283.01.
- Mr. “Jones” has been convicted of felony child abuse due to the abuse he inflicted on “Sally”. “Sally” suffered bruising all over her body and broken bones at the hands of Mr. “Jones.”
- Ms. “Smith” delayed in seeking proper medical treatment for “Sally.” The Supreme Court found (*in re Interest of Jac’quez N. 266 Neb. 782; 669 N.W.2d 429; 2003*) that “Although the evidence does not tend to establish that [mom] inflicted the initial injuries on [child], it clearly and convincingly establishes that she delayed seeking medical treatment for 48 hours after he had received obvious and serious injuries, thus severely neglecting his medical needs.